

# **HEARING OFFICER'S REPORT OF PROCEEDINGS OF PUBLIC HEARING AND COMMENT PERIOD**

Amendment to 15A NCAC 13B .0832  
"General Provisions" for Septage Management

Environmental Management Commission

March 10, 2022 Meeting

## Basic Information

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Commission:	Environmental Management Commission Groundwater and Waste Management Committee
Agency	Department of Environmental Quality, Division of Waste Management, Solid Waste Section
Title	"General Provisions" for Septage Management
Citations	15A NCAC 13B .0832
Description of the Proposed Rules	It is the responsibility of the Division of Waste Management Solid Waste Section to regulate how solid waste is managed within the state under the statutory authority of the Solid Waste Management Act, Article 9 of Chapter 130A of the General Statutes. State rules governing solid waste management are found in Title 15A, Subchapter 13B of the North Carolina Administrative Code. Rule .0832 establishes general requirements for septage management and septage permits.
Agency Contacts	Jessica Montie Solid Waste Rulemaking Contact Jessica.Montie@ncdenr.gov (919) 707-8247
Authority	G.S. 130A-294; G.S. 150B-21.3A
Statement of Necessity	This amendment was required by Session Law 2021-83 (S474) Section 3.
Hearing Officer	Perry Sugg, P.G. Hydrogeologist Solid Waste Section
Comment Period	December 15, 2021 to February 14, 2022
Public Hearing	January 20, 2022
Comment Summary	One verbal comment was received at the January 20, 2022, public hearing in support of the amendment. A written version of the same comment was also received. No other comments were received during the comment period.
Appendices	APPENDIX 1 – Agency Head Certification APPENDIX 2 – Hearing Officer Appointment Memo APPENDIX 3 – Notice of Text in the NC Register APPENDIX 4 – Written Comment Received APPENDIX 5 – Hearing Transcript

## Rule Summary and Background

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It is the responsibility of the Division of Waste Management (Division) Solid Waste Section (Section) to regulate how solid waste is managed within the state under the statutory authority of the Solid Waste Management Act, Article 9 of Chapter 130A of the General Statutes. State rules governing solid waste management are found in Title 15A, Subchapter 13B of the North Carolina Administrative Code. Rule .0832 “General Provisions” for septage management establishes general requirements for septage management and permitting.

Rule .0832 “General Provisions” was required to be amended by [S.L. 2021-83 \(S474\) Section 3](#) to extend the maximum permit length for subsequent permits (those issued after the initial permit) for septage land application site (SLAS) and septage detention and treatment facilities (SDTF) from five years to ten years. The Session Law also implemented this change to permit length directly, effective for any permits issued after July 1, 2021. The Session Law was effective on July 8, 2021, and the implementation portion of the Session Law remains effective until this rule amendment is adopted.

A regulatory impact analysis was prepared for the amendment to Rule .0832. The North Carolina Office of State Budget and Management (OSBM) determined that no fiscal note was required because there are no impacts resulting from this amendment. Any impacts are a result of the session law implementation and not the rule amendment. OSBM approved the regulatory impact analysis on July 26, 2021.

## Public Comment and Hearing

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The proposed rules and the regulatory impact analysis were approved by the Environmental Management Commission (EMC) to proceed to public comment and hearing at the November 18, 2021, EMC meeting. The Agency Head Certification is included in Appendix 1. Perry Sugg, staff hydrogeologist with the Division of Waste Management’s (DWM) Solid Waste Section, was subsequently designated as the hearing officer. The Hearing Officer Appointment Memo is included in Appendix 2.

The proposed rules were published in the NC Register, and the proposed rules and regulatory impact analysis were published on the Department of Environmental Quality’s (DEQ) proposed rules website throughout the public comment period from December 15, 2021 through February 14, 2022:

<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules/proposed-rules#15a-ncac-13b-0832-general-provisions-for-septage-management>

The Notice of Text included in Appendix 3 was published in the NC Register Volume 36 Issue 12, page 1047:

<https://files.nc.gov/ncoah/documents/files/Volume-36-Issue-12-December-15-2021.pdf>

The Division also sent a link to the published notice, rule text, and regulatory impact analysis for public comment to interested parties including industry stakeholders, environmental groups, septage and solid waste management organizations, licensing boards, the League of Municipalities, and the Association of County Commissioners via e-mail on December 13, 2021.

## Public Hearing

The Division held a virtual public hearing via WebEx Events on January 20, 2022, for this rule amendment at the link provided in the public notice. Perry Sugg served as the hearing officer for the hearing. The public notice also provided a link for attendees to register to speak at the hearing. The only attendee of the public hearing, other than Department staff, was Dr. A. Robert Rubin, Professor Emeritus with North Carolina State University. Dr. Rubin is also a prior distinguished member of the Environmental Management Commission and prior Chairman of the EMC's Water Quality Committee.

One comment was provided at the hearing by Dr. Rubin. Dr. Rubin also submitted the same comment in writing via email. A copy of Dr. Rubin's written comment is provided in Appendix 4. The hearing transcript is provided in Appendix 5.

### Written Comment provided by Dr. Rubin via e-mail on January 17, 2022:

*"Good morning all - I am in favor of the proposed rule change in section .0832 to extend the operating permit to 10 years. I believe soil testing, waste analysis, etc. can be accomplished by operators and consultants and if there are issues that arise, permits can be reviewed as necessary. I have registered for the hearing. Thanks to you all for all that you do for us."*

### Comment provided by Dr. Rubin at the public hearing on January 20, 2022:

*"Good afternoon. My name is Dr. Albert Robert Rubin. I am an emeritus professor at North Carolina State University, in the Biological and Agricultural Engineering Department. I have been involved in water and waste management issues in North Carolina for about 40 years. I started my career at North Carolina State in 1975; and have been involved in land-based treatment and beneficial use for quite a while.*

*I do want to speak in favor of the provision to change the land application and the septage detention and treatment facility permit period for permits other than the initial permit to 10 years. I think that there are significant beneficial environmental impacts that are associated with that. I am supportive of this because the testing will continue every 2 years, and the inspections can occur as required.*

*I do have one comment and that is that Mecklenburg County does have some specific provisions for pumpers, and I do hope that someone informed Mecklenburg County of this rule change. There may be people that do work in the county that may not be aware of this permit change and I do think it's important that they are informed. But I am strongly supportive of this amendment. I think that the folks in the septage management branch do a wonderful job. I have been involved, as I said, with these rules for a number of years and I think that every change is beneficial. That concludes my comment."*

### Department Response:

*The Department appreciates the comments and the support of the amendment provided by Dr. Rubin. The Department confirmed that notice of the rule amendment and comment period was sent via email on December 13, 2021, to Joe Hack with Mecklenburg County Solid Waste, and also to David Coleman, the Mecklenburg County enforcement staff that enforces some of the requirements in 15A NCAC 13B Section .0800 on behalf of the Department through a memorandum of agreement.*

## **Summary**

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One comment in support of the amendment was received both at the hearing and in writing from Dr. A. Robert Rubin during the public comment period on the amendment to 15A NCAC 13B Rule .0832. The Division is not proposing any changes to the rule text after the comment period.

## **Hearing Officer's Recommendation**

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The Hearing Officer recommends that the Environmental Management Commission approve the regulatory impact analysis and adopt the amendment to 15A NCAC 13B Rule .0832 "General Provisions" for septage management as published in the NC Register, and presented at the March 10, 2022, EMC meeting as Attachment A.

## **APPENDIX 1**

### Agency Head Certification

**CERTIFICATION OF THE AGENCY HEAD  
REGARDING COMPLETION OF A FISCAL NOTE AND RULE ANALYSIS**

**IN RE: 15A NCAC 13B .0832 "General Provisions"**

**FINDINGS**

The Chair of the North Carolina Environmental Management Commission ("the Commission") is appointed by the Governor to guide and coordinate the activities of the Commission in fulfilling its duties. G.S. § 143B-284.

The Commission has the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State. G.S. § 143B-282(a).

The undersigned Chair of the North Carolina Environmental Management Commission hereby certifies that the attached rules comply with the rulemaking principles set out in Executive Order No. 70 as amended by Executive Order 48 (2014). The Chair specifically certifies the following:

1. The attached rules are necessary because the rules are  
       \_\_\_\_\_ required by federal law, citation: \_\_\_\_\_  
         X   required by state law, citation: S.L. 2021-83  
         X   deemed necessary by the agency to serve the public interest
  
2. These rules were based on sound, reasonably available scientific, technical, economic, and other relevant information that can be found in the rulemaking record. The rulemaking record can be found in the minutes of the Commission and in supporting documents. Those documents can be found on the Division of Waste Resource's webpage at <http://deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission> or may be requested from the Clerk of the North Carolina Environmental Management Commission at [EMCclerk@ncdenr.gov](mailto:EMCclerk@ncdenr.gov).
  
3. The fiscal impacts of the rules have been analyzed and appropriate action taken as follows:  
         X   The Commission determined that no fiscal note was required under G.S. § 150B-21.4; or  
       \_\_\_\_\_ A fiscal note has been prepared and approved by [or submitted to] the Office of State Budget and Management in accordance with G.S. § 150B-21.4. A copy of the fiscal note can be found in the rulemaking record at the locations described in (2) above.
  
4. The rules meet all other requirements of Executive Order No. 70.

Based upon the foregoing Findings, and pursuant to the requirements of the North Carolina Administrative Procedures Act and Executive Order No. 70, the undersigned makes the following:

### **CERTIFICATION**

The following proposed rule, 15A NCAC 13B .0832, entitled "General Provisions", is in compliance with Executive Order No. 70.

This, the 30th day of November, 2021 at Raleigh, North Carolina.



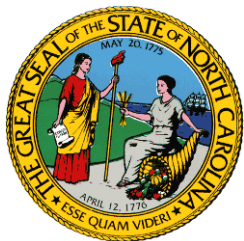
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Chair  
North Carolina Environmental Management Commission



## **APPENDIX 2**

### Hearing Officer Appointment Memo



## ENVIRONMENTAL MANAGEMENT COMMISSION

### NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

Robin Smith  
Chairman  
Dr. Suzanne Lazorick  
Vice-Chair

Roy Cooper, Governor  
Elizabeth S. Biser, Secretary

David W. Anderson  
Shannon M. Arata  
Yvonne C. Bailey  
Charles Carter  
Donna L. Davis  
Marion Deerhake

Christopher Duggan  
Patrick K. Harris  
Steve Keen  
John McAdams  
Margaret C. Monast  
Jennifer Kelvington

**To:** Perry Sugg, NCDEQ Div. of Waste Management, Solid Waste Section

**From:** Robin Smith, Chairman *RS*

**Subject:** Hearing Officer Appointment

A virtual public hearing has been scheduled for January 20, 2022 at 4:30 PM via WebEx. The purpose of this hearing is to receive comments on an amendment to septage management rule 15A NCAC 13B .0832 "General Provisions" to extend the permit length of subsequent permit for septage land application sites and septage detention and treatment facilities from five years to ten years as required by S.L. 2021-83.

I am hereby appointing you to serve as hearing officer for these hearings. Please receive all relevant public comment and report your findings and recommendations to the Environmental Management Commission. Ms. Jessica Montie with the NCDEQ Division of Waste Management will provide staff support for you.

If you have any questions, please feel free to contact Jessica Montie at 919-707-8247, or me.

cc: Lois Thomas  
Jessica Montie  
Hearing Record File

## **APPENDIX 3**

Notice of Text in the NC Register

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 13B .0832.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main/proposed-rules>

**Proposed Effective Date:** Pending Legislative Review

**Public Hearing:**

**Date:** January 20, 2022

**Time:** 4:30 p.m.

**Location:** A virtual public hearing will be held by webinar as follows:

WebEx Event Meeting Link:

<https://ncdenrits.webex.com/ncdenrits/j.php?MTID=m8d8e13db4c07e1775d3a3094a7a544fa>

Event number: 2437 299 9427

Event password: 1234

To join by phone: Call +1-415-655-0003 US TOLL, enter access code

If you wish to attend the hearing, you must register before 5:00 p.m. on Wednesday, January 19, 2022.

The registration form can be found at the following link: <https://forms.office.com/g/W0q1wxabEO>

**Reason for Proposed Action:** The proposed amendment changes the permit length for subsequent septage land application sites and septage detention and treatment facility permits from five years to ten years. This amendment was required by S.L. 2021-83, s. 3. The Session Law also implemented the change to the permit length directly, beginning July 1, 2021.

**Comments may be submitted to:** Adam Ulishney, 1646 M.S.C., Raleigh, NC 27699-1646; email [dwm.publiccomments@ncdenr.gov](mailto:dwm.publiccomments@ncdenr.gov)

**Comment period ends:** February 14, 2022

**Rule is automatically subject to legislative review:** S.L. 2021-83, s. 3.(d)

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

**15A NCAC 13B .0832 GENERAL PROVISIONS**

(a) General permitting requirements.

- (1) No person shall manage septage, or any part of septage, or operate a Septage Management Firm without first obtaining a permit from the Division as required under G.S. 130A-291.1(c);
- (2) The permit requirement of G.S. 130A-291.1(c) applies to persons who remove septage, and other waste materials or spent media from wastewater systems permitted by the Department of Health and Human Services, under the authority of Article 11, Chapter 130A of the North Carolina General Statutes;
- (3) The permit requirement of G.S. 130A-291.1(c) applies to persons who manage septage generated from properties that they own, lease, or manage as part of a business, such as mobile homes, mobile home parks, restaurants, and other residential and commercial property;
- (4) The Division may deny a permit application in accordance with G.S. 130A-295.3(c);
- (5) The Division may require an applicant to demonstrate substantial compliance in accordance with G.S. 130A-294(b2)(2);
- (6) Permits issued in accordance with this Section shall be followed;
- (7) Where specified in this Section, permit applications or specific portions of applications shall be prepared in accordance with Rule .0202(a)(3) of this Subchapter; and
- (8) Initial septage land application site and detention and treatment facility permits shall be valid for one year. Subsequent permits shall be valid for ~~five~~ 10 years. The Division may issue a subsequent permit for less than ~~five~~ 10 years based on any of the following factors:
  - (A) the duration of the landowner authorization or wastewater treatment plant authorization;
  - (B) the compliance history of the operator;
  - (C) if any of the information for the permit application was received after the due date; or
  - (D) to allow the due date for a subsequent permit application to be the same date as the septage firm permit application due date.

(b) Portable sanitation permitting provisions.

- (1) A mobile or modular office that meets the criteria of G.S. 130A-291.2 shall be considered a chemical or portable toilet as defined in G.S. 130A-290(a)(1c). A storage tank at a mobile or modular office shall not release septage onto the ground. The owner and the lessee of the mobile or modular office shall be considered to be the responsible parties and shall be subject to the requirements of Paragraph (a) of this Rule.
  - (2) No person shall rent or lease portable toilet(s) or contract or subcontract to rent or lease portable toilet(s) to another person or manage or dispose of waste from portable toilet(s), regardless of ownership of the toilet(s), unless that person is permitted to operate a septage management firm.
  - (3) Placement of a chemical or portable toilet as defined in G.S. 130A-290(a)(1c) for potential use in North Carolina shall be considered operation of a septage management firm that requires a permit.
- (c) Recreational vehicle waste provisions.
- (1) Domestic septage from a recreational vehicle shall be managed in accordance with this Section or shall flow directly into a wastewater treatment system permitted by the Department of Environmental Quality.
  - (2) Wastewater from recreational vehicles that are tied down, blocked up, or that are not relocated, and that are not connected to an approved wastewater system shall be managed in accordance with Article 11, Chapter 130A of the NC General Statutes.
  - (3) Recreational vehicle dump stations that do not discharge directly to a wastewater treatment system permitted by the Department of Environmental Quality shall be permitted as a septage detention and treatment facility in accordance with Rule .0837 of this Section.
- (d) Alternate septage management method limitations.
- (1) Grease septage, or any part of grease septage, shall not be introduced or reintroduced into a grease trap, interceptor, separator, or other appurtenance used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup unless the Division has received written approval from the wastewater treatment plant operator or the onsite wastewater system permitting authority that reintroduction is acceptable.
  - (2) Septage, or any part of septage, shall not be reintroduced into an onsite wastewater system unless approved pursuant to G.S. 130A-343(c).
  - (3) Septage, or any part of septage, shall not be placed in containers at restaurants designated for yellow grease.
  - (4) Septage, or any part of septage, shall not be disposed of in a municipal solid waste landfill unless the waste passes the Paint Filter Liquids Test as defined by EPA S.W. 846 Test Method 9095B which can be accessed at no cost at <https://www.epa.gov/hw-sw846>, and the landfill receiving the waste has provided the Division written documentation that the specific material will be accepted.
  - (5) Septage, or any part of septage, shall not be disposed of in a dumpster unless the waste passes the Paint Filter Liquids Test and the landfill receiving the waste is a permitted municipal solid waste landfill, in accordance with Section .1600 of this Subchapter.
  - (6) Septage, or any part of septage, managed through subsurface disposal shall be considered a treatment facility and shall require a permit in accordance with this Section and G.S. 130A-343.
  - (7) Facilities receiving septage, or any part of septage, for composting shall be permitted in accordance with Section .1400 of this Subchapter.
- (e) All training to meet the requirements of G.S. 130A-291.3(a) and (b) shall be pre-approved by the Division. Approval by the Division shall be based on whether the training is in accordance with the rules in this Section.
- (f) Waste from holding tanks not otherwise addressed in this Section, and from wastewater systems pumped more often than every 30 days, shall not be considered domestic septage and shall not be land applied at a permitted septage land application site.
- (g) Inspection and entry. The permit holder of a septage management firm or facility shall allow a representative of the Division to:
- (1) enter the permit holder's premises where a regulated facility or activity is located or conducted;
  - (2) access and copy any records required in accordance with this Section or conditions of the permit;
  - (3) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated by the Division;
  - (4) sample or monitor for the purposes of assuring permit compliance or as otherwise authorized by the Federal Clean Water Act or the North Carolina Solid Waste Management Act, any substances, parameters, or soils at any location; and
  - (5) photograph for the purpose of documenting times of compliance or noncompliance at septage management facilities or to require the permit holder to make such photos for the Division.
- (h) Washings from the interior of septage handling containers such as pump trucks shall be managed as septage.

*History Note: Authority G.S. 130A-291.1; 130A-291.2; 130A-295.3(c); 130A-335;  
Eff. October 1, 2009;  
Amended Eff. January 1, 2014;  
Readopted Eff. February 1, 2019;  
Amended Eff. Pending Legislative Review.*

## **APPENDIX 4**

Written Comment Received

**Montie, Jessica**

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**From:** Montie, Jessica  
**Sent:** January 18, 2022 9:59 AM  
**To:** SVC\_dwm.publiccomments  
**Subject:** FW: [External] rule change

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**From:** Albert Rubin <rubin@ncsu.edu>  
**Sent:** January 17, 2022 9:07 AM  
**To:** Montie, Jessica <jessica.montie@ncdenr.gov>; Ulishney, Adam <adam.ulishney@ncdenr.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Scott, Michael <michael.scott@ncdenr.gov>  
**Subject:** [External] rule change

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Good morning all - I am in favor of the proposed rule change in section 0832 to extend the operating permit to 10 years. I believe soil testing, waste analysis, etc can be accomplished by operators and consultants and if there are issues that arise, permits can be reviewed as necessary.

I have registered for the hearing. Thanks to you all for all that you do for us.

Be well. Do good. Stay safe.

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Albert Robert (Bob) Rubin, Emeritus Professor  
Biological and Agricultural Engineering  
North Carolina State University

## **APPENDIX 5**

Hearing Transcript



**Hearing Transcript**  
**January 20, 2022, 4:30 p.m.**  
**15A NCAC 13B Rule .0832**

Good evening, my name is Perry Sugg and I am with the NCDEQ Division of Waste Management Solid Waste Section. My role as hearing officer is to receive comments on the proposed amendment and the regulatory impact analysis; and report those comments and recommend action to the Environmental Management Commission.

During this virtual public hearing tonight, we will be receiving oral comments from those individuals who requested to speak when they pre-registered for this event. If you are having technical difficulties with WebEx, you can use the chat feature in WebEx to ask questions or seek assistance.

We will now open the hearing on the proposed amendment to septage management rule 15A NCAC 13B .0832 titled “General Provisions”. The proposed amendment extends the permit length for subsequent septage land application sites and septage detention and treatment facilities from 5 years to 10 years. This amendment was required by Session Law 2021-83. The session law also implemented the change to permit length directly, effective July 1, 2021. The proposed amendment does not change the length of the initial permit of one year, and does not change the inspection schedule or sampling and reporting requirements.

A regulatory impact analysis was drafted for this rule change, and the final version was approved for publication by the NC Office of State Budget and Management pursuant to G.S. 150B-21.4 on July 26, 2021. The Office of State Budget and Management determined that no fiscal note is necessary because the proposed rule changes have little to no state or local government impacts, and no substantial economic impact.

The public notice for this hearing was published in Volume 36, Issue 12 of the *North Carolina Register* on **December 15, 2021**, and the public notice and regulatory impact analysis were posted on the Department of Environmental Quality’s website. The public notice was also emailed to those on the Division of Waste Management’s email distribution list for septage rulemaking. We will add the public notice, regulatory impact analysis, and the proposed rule changes into the hearing record without reading them at this time.

We will now take comments on the proposed amendments to 15A NCAC 13B Rule .0832 “General Provisions”. To do this, I will call the names of each of the pre-registered speakers in order, and the WebEx Host will unmute the speaker. Please do not start speaking until the WebEx Host has indicated that your

microphone has been unmuted. It would also be helpful if any person speaking tonight would also submit a written statement for inclusion into the hearing record to [dwm.publiccomments@ncdenr.gov](mailto:dwm.publiccomments@ncdenr.gov).

If we call your name, but cannot hear you after you have been unmuted, please check to see if you are still muted on the WebEx screen on your computer, or on your phone. If you are having audio issues, try a different method of audio connection within WebEx or use the “Call Me” feature to have WebEx call your personal telephone line. If we still cannot hear you, we will proceed to the next registered speaker, but will call your name again at the end of the hearing.

Dr. Rubin, you can go ahead and provide your comment.

*“Good afternoon. My name is Dr. Albert Robert Rubin. I am an emeritus professor at North Carolina State University, in the Biological and Agricultural Engineering Department. I have been involved in water and waste management issues in North Carolina for about 40 years. I started my career at North Carolina State in 1975; and have been involved in land-based treatment and beneficial use for quite a while.*

*I do want to speak in favor of the provision to change the land application and the septage detention and treatment facility permit period for permits other than the initial permit to 10 years. I think that there are significant beneficial environmental impacts that are associated with that. I am supportive of this because the testing will continue every 2 years, and the inspections can occur as required.*

*I do have one comment and that is that Mecklenburg County does have some specific provisions for pumpers, and I do hope that someone informed Mecklenburg County of this rule change. There may be people that do work in the county that may not be aware of this permit change and I do think it's important that they are informed. But I am strongly supportive of this amendment. I think that the folks in the septage management branch do a wonderful job. I have been involved, as I said, with these rules for a number of years and I think that every change is beneficial. That concludes my comment.”*

Thank you, Dr. Rubin. We have no other speakers registered. *[Note: Dr. Rubin was the only attendee other than DWM staff]* If you did not register to speak, but still want to provide comments on the proposed rulemaking, remember that you may also provide comments until the end of the comment period on February 14, 2022 by emailing them to [dwm.publiccomments@ncdenr.gov](mailto:dwm.publiccomments@ncdenr.gov). You can also mail written comments to the address listed in the public notice. Thank you all for your participation in this virtual public hearing and your interest in the public hearing process. This hearing is adjourned.